

## **REMARKS/ARGUMENTS**

The Examiner is thanked for her attention to this application.

### **Election**

Applicants acknowledge the election and have indicated withdrawn claims. Applicants reserve rights to have non-elected claims reconsidered in the event of an allowance of a generic claim.

### **Drawings**

New corrected drawings for Figures 12-14 and 17A and 17B are submitted herewith. Replacement sheets 8 and 9 have had indicia added to indicate the pH levels shown in the graph. Replacement sheet 12 has had Fig. 17A expanded and adjusted to be more legible. New sheet 12A has had Fig. 17B expanded and adjusted to be more legible.

### **35 U.S.C. § 112**

Applicant has made amendments to the claims in response to the Examiner's indefiniteness rejections. These amendments are made without prejudice and are intended to not be limiting and do not constitute any agreement with the Examiner's position but are made to expedite prosecution.

### **35 U.S.C. § 103(a)**

The pending claims stand rejected as unpatentable over the combination of Berggren 2001 vol. 13/3, with Berggren 1999 vol. 11/3 and Fonash.

### **Berggren 2001 vol. 13/3, pp 173-180 and Berggren 1999 vol. 11/3**

The reference is a review paper discussing primarily two types of capacitive biosensors: Interdigitated Electrodes and Electrode/Solution Interfaces. The references specifically discuss interdigitated electrodes that are at the micron scale and that suffer from the disadvantages of larger scale devices as discussed in the background of the application.

**Fonash, United States Patent Publication 20030040173, now U.S. Patent 7052616**

Fonash discusses a method for defining a gap or pore can be defined by a material or materials which will allow self-assembly, allow chemical assembly, surface chemistry directed assembly, allow electric field guided assembly, allow steric assembly, or allow all of these. This allows controlled positioning of molecules or nano-particles in applications. It also allows valving materials to be positioned in the gap and to be controlled by gap electric fields, thermal changes, pH changes, and chemical changes when and if desired.

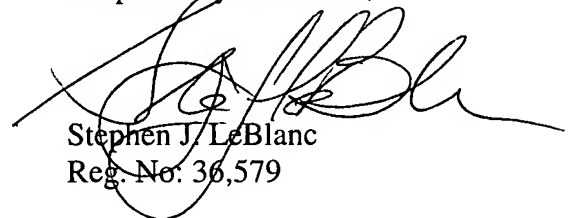
Fonash discloses a specific method for forming a nano-device with micropores. The devices formed thereby include electrodes that are discussed as being used for positioning molecules. There is no suggestion or teaching in Fonash to provide multiple parallel electrodes with nanogaps and having a shared electrode connectivity as is used in the present invention and it is not apparent how the fabrication method of Fonash could be modified to produce a device related to that discussed in the Berggren reference or in Applicants claimed invention.

In order to expedite prosecution, Applicant has made amendments to the claims to more indicate the distinction over the cited art. Applicant reserves the right to present the original claims and to make arguments against the applicability of the cited references.

If a telephone conference would expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (510) 769-3508.

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Respectfully submitted,



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